

## Office of Personnel Management

## § 575.405

positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable special rate under 5 CFR part 530, subpart C; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment or supplement under other legal authority.

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 61 FR 3543, Feb. 1, 1996; 70 FR 25751, May 13, 2005; 72 FR 67841, Dec. 3, 2007]

### § 575.403 Definitions.

In this subpart:

*Agency* has the meaning given that term in 5 U.S.C. 5102.

*Continuing pay* means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

*Continuing payment* means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay.

*Employee* has the meaning given that term in 5 U.S.C. 5102.

*Head of agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position to which the employee is or will be appointed before deductions and including any special rate under 5 CFR part 530, subpart C; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment or supplement under other legal authority, but excluding additional pay of any other kind. For example, *rate of basic pay* excludes a

night differential under 5 U.S.C. 5343(f), an environment differential under 5 U.S.C. 5343(c)(4), or a similar payment under other legal authority.

*Supervisor* has the meaning given that term in 5 U.S.C. 7103(a)(10).

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### § 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in pay among supervisors under the General Schedule in the same organizational component of the agency shall be considered, as well as the relationship in pay between the supervisor and his or her subordinate(s).

(3) Each determination to pay a supervisory differential shall be documented.

### § 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor's basic pay—i.e., the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor's continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the General Schedule, as determined under